IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

CRL.A.No. 901 of 2006()

AGAINST THE ORDER IN CRL.LP.179/2006 Dated 22/03/2006
AGAINST THE ORDER DATED 14/06/2005 IN CC.57/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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APPELLANT: COMPLAINANT:

SILPI AGRO TTECH (P) LIMITED,
40/7334,"V"PENTA SQUARE,
M.G.ROAD,ERNAKULAM,REPRESENTED BY SALES EXECTIVE BINIL DAS.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.T.B.HOOD

RESPONDENTS:

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1. M/S.PARATHODU FEEDS AND MINERALS AGENCIES,PARATHODU-685 571, IDUKKI.

2. JOY BABY, MANAGER,
M/S.PARATHODU FEEDS AND MIENERALS AGENCIES,
PARATHODU-685 571,IDUKKI.

3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH CORURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
PUBLIC PROSECUTOR, SRI. THOMAS JOHN AMBOOKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Crl. Appeal No.901 of 2006 (A)

Dated this the 15th February, 2007.

JUDGMENT

The complaint preferred under Section 138 of the Negotiable Instruments Act was dismissed for the reason that the complainant, or his counsel, were not present before the court below, when the matter was taken up. Therefore, the dismissal as well as the acquittal of the accused, thereon, is under challenge through this appeal, by the complainant, on obtaining leave.

2. I heard the arguments. The only ground advanced by the appellant is that the date was noted by the clerk of the advocate wrongly and, therefore, there was no appearance of either the party, or the counsel before the court.

3. In the facts of this case, I am inclined to give an opportunity to both sides to adduce evidence. Therefore,

I set aside the impugned order, dated 14/06/2005, and restore C.C.No.57/2002 to the file of Judicial Magistrate of First Class-I, Ernakulam.

4. The parties shall appear on 14/03/2007. The learned Magistrate shall, give an opportunity to both sides to adduce evidence, and, dispose of the case, within three months from the date of appearance of the parties.

The appeal is allowed as above.

J.M. JAMES,
JUDGE.

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